IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3031 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEDARA HATHIJI MALAJI

Versus

BIHARI MAJIBHAI JAFFARKHAN

Appearance:

MR BN PATEL for Petitioners

MR AS PANDYA for Respondents Nos.1-8

MS KATHA GAJJAR, AGP for Respondents Nos.9-10

MR SS BELSARE for Respondent No. 11

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioners challenge the common judgment and order dated 4th November, 1988 passed by the State Government (Additional Chief Secretary - Appeals, Revenue Department) in Revision Applications Nos.BNS.VATAN.2/1988 and BNS.VATAN.3/1988. The facts leading to the present petition are as under :

The petitioners nos.2 to 4 claim to be the purchasers of the land bearing Survey No.30/2 admeasuring 2-Acres 26-Gunthas and Survey No.31/3 admeasuring 0-Acre 29-Guntha constituting part of land Block No.85 of Village Khasa, Taluka Palanpur, District Banaskantha. It is the claim of the petitioners that the said lands originally belonged to one Jaffarkhan Sahebkhan. The State Government introduced the consolidation scheme under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act') in Village Khasa in the year 1963. The holding of the said Jaffarkhan Sahebkhan was reconstituted in the lands Block Nos.92 and 85. The land Block No.85 included several pieces of land including the above referred Survey Nos.30/2 and 31/3. According to the petitioners, the said lands Survey Nos.30/2 and 31/3 were sold by the said Jaffarkhan Sahebkhan to one Madhuji Halaji on 9th March, 1968 under an unregistered sale deed. The said Madhuji Halaji sold the said lands to the petitioner no.1 herein on 10th March, 1970 by registered sale deed. Since then, the petitioner no.1 has sold the said lands to the petitioners nos.2 to 4 on 24th April, 1986 under a registered sale deed. The transfer made to Madhuji Halaji and further transfer made in favour of the petitioner no.1 came up for consideration before the Deputy Collector, Palanpur. The Deputy Collector, Palanpur, under his order dated 4th June, 1973, observed that the lands Survey Nos.30/2 and 31/3 were contiguous and formed part of the Block No.85. He, therefore, after hearing the vendors and the purchasers, regularized the said transfer and granted ex-post-facto permission for such transfer as envisaged under Section 31 of the Act. Pursuant to the said order, Revenue Entry No.522 came to be registered in the Village Form No.6.

#. The said Entry No.522 came to be challenged by the respondents nos.1 to 5, the heirs and legal representatives of the deceased Jaffarkhan Sahebkhan before the Collector, Banaskantha in Appeal No.118/1986. The respondents nos.6 to 8, the heirs and legal representatives of one Pirozkhan Asmamiya preferred Appeal No.113/1986 before the Collector, Banaskantha and challenged the said Entry No.522. According to the said appellants, the land Survey No.30/2 belonged to their predecessor Pirozkhan Asmamiya and formed part of the

Block No.84. After hearing the concerned parties, the Collector, Banaskantha was pleased to allow the said appeals under his orders dated 31st May, 1988 and 23rd June, 1988 respectively. Feeling aggrieved, the petitioners preferred the above referred Revision Applications No.2/88 and 3/88 before the State Government, which were dismissed under the impugned order dated 4th November, 1988. Therefore, the petition.

#. Mr.Patel has submitted that there was a gross delay in preferring the appeals. The delay in question was not explained. The Collector, Banaskantha, therefore, was not justified in proceeding with the appeals on merits without recording his satisfaction in respect of the delay in question. He has further submitted that the order dated 4th June, 1973 made by the Deputy Collector was essentially one under Section 31 of the Act. No appeal, therefore, could have lain before the Collector, Banaskantha. Both the impugned orders are, therefore, made without the authority of law and deserve to be quashed and set aside. Even otherwise, the impugned orders have been made on the surmises and conjectures. The observations made and the findings recorded are not supported by any evidence. The said findings are, therefore, based on no evidence; the decision, therefore, requires to be quashed and set aside.

#. The petition is contested by the learned advocates Mr.AS Pandya as well as Mr.SS Belsare. It is submitted that the predecessors of the respective respondents had never parted with the lands in question. The order of 4th June, 1973 has been made in violation of principle of natural justice and is inherently wrong. The said order, therefore, has rightly been set aside. It is also submitted that what was challenged before the authority below was the Entry No.522 and, therefore, appeal before the Collector was maintainable, even if it is held that the order dated 4th June, 1973 was one made under Section 31 of the Act and was not appealable, the same could have been challenged before the State Government in Revision Application. Hence, when substantial justice has been done, no interference is warranted for want of jurisdiction. It is also contended that the order dated 4th June, 1973 is based either on erroneous materials or on the materials which were misleading. No interference under Article 227 of the Constitution is, therefore, called for.

#. At the beginning I must say that a common petition against two orders is not maintainable. Even if

the authority below had made a common order, it was the duty of the petitioner to challenge the same in two separate petitions. However, since the petition has been entertained as far back as in the year 1989, I do not suppose that the petitioner should be relegated to file separate petitions. But, certainly a word of caution is required to be issued that such petitions should never be presented, nor should the Registry accept such petitions.

#. On the facts and in the circumstances of the case, I am of the view that whatever be the challenge before the Collector, Banaskantha, the challenge was essentially one against the order dated 4th June, 1973 made by the Deputy Collector, Palanpur. The said order has, expressly, been made under Section 31 of the Act. Section 31 of the Act is included in Chapter 4 of the Act. Section 31 of the Act imposes prohibition against the transfer of a holding or a part thereof allotted under the Act, except in accordance with such conditions as may be prescribed. Section 36 of the Act provides, inter alia, that except as provided in the Act, no appeal or revision application shall lie from any order passed under Chapter 4 of the Act. Section 35 of the Act confers revisional power upon the State Government over the orders made under the Act. Hence, the above referred order dated 4th June, 1973 made by the Deputy Collector, Palanpur could not have been questioned before the Collector, Banaskantha in an appeal. The orders made by the Collector, Banaskantha are, therefore, made without the authority of law. The said orders and the subsequent orders made by the State Government in Revision, therefore, deserve to be quashed and set aside on this ground alone. True, the jurisdiction of the Collector, Banaskantha was not challenged before the said authority. However, the jurisdiction can not be conferred by consent of the parties also. The said orders which suffer from the vice of inherent lack of jurisdiction can not be sustained and such jurisdiction can be questioned even before this Court under Article 227 of the Constitution.

#. Since, I am of the view that the impugned orders require to be quashed and set aside on this ground alone, I do not deal with the other contentions on merits, lest any observation that may be made in this regard may hamper the process of law in the event the respondents intend to challenge the said order dated 4th June, 1973 once again before the appropriate forum in appropriate proceeding.

#. For the aforesaid reasons, the petition is allowed. The impugned order dated 4th November, 1988 of

the State Government made in Revision Applications Nos.2/88 and 3/88 and the orders dated 31st May, 1988 and 23rd June, 1988 made by the Collector, Banaskantha in Appeals Nos.118/1986 and 113/1986 respectively are quashed and set aside. Rule is made absolute. There shall be no order as to cost.

20th February, 2002. (Ms. R.M.Doshit, J.)